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Paper No.

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**OFFICE OF PETITIONS**

In re Application of :  
Deshpande et al. :  
Application No. 10/709,048 : DECISION ON PETITION  
Filed: April 8, 2004 :  
Attorney Docket No. FIS920030397US1:

This is a decision on the "PETITION UNDER 37 C.F.R. 1.17(h) . . .," filed September 20, 2004, requesting that the above-identified application be accorded a filing date of April 8, 2004, an executed declaration and technical abstract be considered present in the application on filing, and the petition fee be refunded.

Application papers in the above-identified application were electronically filed on April 8, 2004. However, on August 12, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application," notifying applicants that the application papers had not been accorded a filing date because the application was deposited without drawings as required by 35 U.S.C. 113. The Notice further stated that the application was missing the oath or declaration, and an abstract of the technical disclosure was required.

In reply, applicants timely filed the instant petition. Applicants assert that the alleged omitted items were, in fact, filed in the USPTO with the remaining papers of the original application on April 8, 2004. To show that the drawings, declaration and abstract were among the papers filed on April 8, 2004, applicants submit *inter alia* a copy of the Acknowledgement Receipt from the USPTO dated April 8, 2004. The petition includes a duplicate copy of the application as petitioner maintains it was filed electronically with the USPTO on April 8, 2004.

Consideration of petitioner's evidence is unnecessary. On review of Office records, the missing documents were found to be present in the Electronic Filing System (EFS) filing. The application as-filed electronically included drawings, and thus, is entitled to a filing date of April 8, 2004. Moreover, both a declaration and an abstract were received on filing.

In view thereof, the petition is **GRANTED**.

The Notice of Incomplete Nonprovisional Application mailed August 12, 2004 was mailed in error and is hereby vacated.

As the declaration was submitted on filing, no late surcharge under § 1.16(e) is required.

Given the basis for granting the petition, the petition fee is being refunded to Deposit Account No. 09-0458, as authorized.

The Office of Initial Patent Examination (OIPE) has been advised of this decision. The application is, thereby, forwarded to OIPE for:

- correction of the filing date to April 8, 2004, using the application papers received in the Office on that date, including the allegedly omitted items found to be present in the original EFS filing of the application (5 sheets of drawings (figs 1-9), 1 page of abstract, and an executed declaration);
- and completion of pre-examination processing, including notation in Office records, as appropriate, that an executed declaration was received in the Office on filing of this application.

Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3219.



Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions